Supreme Court, U.S.
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No. 96-707

In The

Supreme Court Of The United States

October Term, 1996

JERRY BOYETT, a minor, suing by his father and next friend, Wayne Boyett,
Petitioner,

v.

LALAR TOMBERLIN, JIM HEAD, SAMMY CARR, AND THE CRENSHAW COUNTY BOARD OF EDUCATION,
Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Alabama

RESPONDENTS' BRIEF IN OPPOSITION

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10 pp

QUESTION PRESENTED

1. Whether the Appellate Courts of Alabama were proper in affirming Summary Judgment in favor of the Respondents as to the Petitioner's claim under the Due Process Clause of the Fourteenth Amendment.

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RESPONDENTS' BRIEF IN OPPOSITION

Respondents, Lalar Tomberlin, Jim Head, Sammy Carr, and the Crenshaw County Board of Education, respectfully submit this Brief in Opposition to the Issuance of a Writ of Certiorari to the Supreme Court of Alabama.

OPINIONS BELOW

The opinions of the Alabama Court of Civil Appeals and the Alabama Supreme Court are recorded at 678 So. 2d 124 (Ala. Civ. App. 1995), cert. denied, No. 1950668 (Ala. May 31, 1996).

JURISDICTIONAL STATEMENT

Respondents agree with the Petitioner's allegations of this Court's jurisdiction.

STATEMENT OF THE CASE

Respondents herein adopt the Petitioner's Statement of the Case.

SUMMARY OF THE ARGUMENT

The Circuit Court of Crenshaw County, Alabama granted summary judgment in favor of the Defendants/Respondents in this matter. Plaintiff/Petitioner appealed and the Alabama Court of Civil Appeals affirmed. Petitioner requested rehearing and was denied by the Court of Civil Appeals; he then petitioned the Alabama Supreme Court to issue a writ of certiorari to review the matter. The petition was denied. Boyett by Boyett v. Tomberlin, 678 So. 2d 124 (Ala. Civ. App. 1995), cert. denied, No. 1950668 (Ala. May 31, 1996). Petitioner now asks this Court for certiorari review of the Alabama courts' decisions. The petition should be denied and no writ should issue.

First, Petitioner failed to present sufficient information to prove that what the Respondents did or did not do was a violation of Boyett's substantive due process rights. The Alabama courts agreed and found no constitutional deprivation. In addition, the Respondents were entitled to the protection of qualified immunity as to the due process claim. Petitioner failed to meet his burden by proving to the court that the right allegedly violated here was clearly established, so that a reasonable school official would have understood that his or her acts were unlawful.

Finally, Petitioner avers that the decisions of the Alabama Supreme Court and the Court of Civil Appeals in this case conflict with this Court's holdings in Tinker v. Des Moines Independent Community School Dist., 393 U.S. 503 (1969) and Shelton v. Tucker, 364 U.S. 479 (1960). (Petition, p. 15). This proposition is in error. As the Court has stated, and as Respondents agree, students are not stripped of their constitutional rights once on school grounds. Id. The decisions

of the Alabama Courts in this case in no way assert anything which conflicts with this proposition.

ARGUMENT

I. THE ALABAMA COURTS CORRECTLY HELD THAT PETITIONER FAILED TO STATE A VIABLE CLAIM FOR DEPRIVATION OF HIS CONSTITUTIONAL RIGHTS UNDER THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT, PURSUANT TO 42 U.S.C. § 1983.

In affirming summary judgment in favor of the Respondents, the Alabama Court of Civil Appeals found that the Petitioner failed to state a claim for deprivation of his Due Process rights under the Fourteenth Amendment, pursuant to the remedial provisions of 42 U.S.C. § 1983.

Petitioner relies on Bonwell v. Bobo, 659 So. 2d 98 (Ala. 1995), for the contention that because, under Bonwell, the Alabama Supreme Court found that school children have a liberty interest in their bodily integrity, Petitioner was thus deprived of such a liberty interest when he was not allowed to go to the restroom on demand. It is clear, however, that the facts of Bonwell and the present case are materially dissimilar.

Bonwell discussed the parameters of a substantive due process claim brought under § 1983 against school administrators by students who had been sexually abused by a teacher. The Alabama Supreme Court noted the Fifth Circuit Court of Appeals for the principle that "state-occasioned damage to a person's bodily integrity is protected by the

Fourteenth Amendment guarantee of due process." Bonwell at 9, citing Doe v. Taylor Independent School District, 15 F.3d 443, 450-52 (5th Cir. 1994), cert. denied, Lankford v. Doe, 115 S. Ct. 70 (1994), citing Shillingford v. Holmes, 634 F.2d 263, 265 (5th Cir. 1981). Such action is considered to be that which "transcend[s] the bounds of ordinary tort law and establish[es] a deprivation of constitutional rights." Id., at 10. As the Alabama Court of Civil Appeals correctly noted in the present case, "[t]he facts of this case are a far cry from those in Bonwell." Boyett, supra, at 127. Bonwell stands for the proposition that students who are sexually molested may have a right to bring a cause of action under § 1983; certainly not, as Petitioner would contend, that any time a teacher refuses to allow a student to leave class to go to the restroom, the teacher violates the student's constitutional rights.

The Petitioner's reliance on Bonwell is misplaced. Petitioner failed to present sufficient information which clearly established that what the Respondents did or did not do was a violation of Boyett's substantive due process rights. The Alabama courts agreed and found no constitutional deprivation. That decision was proper and does not merit review by this Court.

II. THE RESPONDENTS ARE ENTITLED TO THE PROTECTION OF QUALIFIED IMMUNITY AS TO THE PETITIONER'S CLAIM UNDER § 1983.

The Respondents are further protected from this claim under § 1983 on the basis of qualified immunity, as the Petitioner has failed to state what clearly established law the challenged conduct violated.

The qualified immunity defense and its elements were set out in this Court's decision in Harlow v. Fitzgerald, 457 U.S. 800 (1982). The relevant language from Harlow states: "[G]overnment officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Id., at 818.

The tests set forth in Harlow, supra, and its progeny, amount to an "objective-reasonableness" test, with two parts:

> 1. The defendant public official must prove that he was performing duties within the scope of his discretionary authority when the alleged violation occurred.
>
> 2. After the defendant proves he was acting within his discretionary authority, the burden shifts to the plaintiff to show a lack of good faith on defendants' part. This burden is met by proof demonstrating that the defendant public official's actions "violated clearly established constitutional law."

Hutton v. Strickland, 919 F.2d 1531, 1537 (11th Cir. 1990).

Both parts of the "objective-reasonableness" test fall in favor of the Respondents. Teaching, supervision of the classroom, decisions on the appropriateness of, and supervisory review of, disciplinary decisions (actions of which the Petitioner complains) fall squarely within the bounds of discretionary decision-making authority, vested in the positions held by the various Respondents.

The Alabama Supreme Court, in assessing the scope of discretionary acts (for which qualified immunity is extended), has adopted the language from Black's Law Dictionary 419 (5th Edition 1979):

> "Those acts [as to which] there is no hard and fast rule as to course of conduct that one must or must not take and if there is [a] clearly defined rule, such would eliminate discretion . . . . [It is] one which requires exercise in judgment and choice and involves what is just and proper under the circumstances."

Nance v. Matthews, 622 So. 2d 297, 300 (Ala. 1993).

The Alabama Court of Civil Appeals, in its opinion in the present case, citing the Nance decision, found that there was no question that the acts of the individual Defendants/Respondents Tomberlin, Head and Carr constituted discretionary functions, for which they possessed immunity. Boyett, supra, at 127. The Court quoted verbatim the affidavit of Respondent Lalar Tomberlin in assessing her actions in this case. Importantly, the affidavit notes that the Petitioner had previously had ample opportunity to use the restroom prior to class and his request to leave was loud and disruptive. Tomberlin concluded: " 'Given the theatrical nature of his equest, I felt that allowing such a request would affect my ability to educate my students and control my classroom.' " Id., at 126. The Court summarized its findings, citing the Alabama Supreme Court in Byrd v. Sullivan, 657 So. 2d 830, 833 (Ala. 1995) as follows: " '[T]hese are the types of decisions made by teachers, principals, and other school personnel every day, using their best judgment and evaluation of the circumstances.' " Boyett, supra, at 127.

Because the court found that the Respondents were engaged in discretionary functions, the Petitioner was then required to show a lack of good faith on the Respondents' part by demonstrating that "legal norms allegedly violated by the defendants were clearly established at the time of the challenged actions or, . . . the law clearly prescribe[d] the actions the defendant[s] . . . took." Mitchell v. Forsyth, 472 U.S. 511, 528 (1985). This Court has said: "The contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." Anderson v. Creighton, 483 U.S. 635 (1987). This Court has also stated that "[t]he qualified immunity defense . . . provides ample protection to all but the plainly incompetent or those who knowingly violate the law." Malley v. Briggs, 475 U.S. 335, 341 (1986).

The Eleventh Circuit Court of Appeals, in Rodgers v. Horsley, 39 F.3d 308 (11th Cir. 1994), has said:

> When considering whether the law applicable to certain facts is clearly established, the facts of the cases relied upon as precedent are important. The facts need not be the same as the facts of the immediate case. But they do need to be materially similar. Public officials are not obligated to be creative or imaginative in drawing analogies from previously decided cases.

Id., at 310.

The Petitioner states that the individual Respondents violated the constitutional rights of the Petitioner by claiming he was deprived of a liberty interest in his bodily integrity, relying on the Alabama Supreme Court's decision in Bonwell v. Bobo,

supra. The facts of Bonwell have been discussed previously, and the differences noted thereunder. In addition, it should be noted that Bonwell was decided on December 1, 1995. There is no way the Petitioner can rely on Bonwell as clearly establishing the law in this area so that the Respondents could understand that what occurred in the present case violated the constitutional rights of Petitioner. The incident in the present case occurred on September 13, 1993.

Boyett's reliance on Bonwell constitutes insufficient proof that the right allegedly violated here was clearly established, so that a reasonable school official would have understood that his or her acts were unlawful. As such, the Respondents were entitled to the protective shield of qualified immunity and the Alabama courts were proper in finding in favor of the Respondents on the Petitioner's claim under the Fourteenth Amendment.

III. THE DECISIONS OF THE ALABAMA COURTS IN THIS CASE ARE NOT IN CONFLICT WITH DECISIONS OF THIS COURT.

Boyett contends in his petition that the decisions of the Alabama Supreme Court and the Court of Civil Appeals in this case conflict with this Court's holdings in Tinker v. Des Moines Independent Community School Dist., 393 U.S. 503 (1969) and Shelton v. Tucker, 364 U.S. 479 (1960). (Petition, p. 15). This proposition is in error. As the Court has stated, and as Respondents agree, students are not stripped of their constitutional rights once on school grounds. Id. The decisions of the Alabama Courts in this case in no way assert anything which conflicts with this proposition. The Alabama Court of Civil Appeals, in a unanimous decision, simply stated that, based on the facts presented in this case, "[t]he Due Process Clause of

the Fourteenth Amendment does not guarantee a student the right to be excused from a classroom upon demand, even if the asserted reason is to use the toilet." Boyett, supra at 127.

Thus, Petitioner's assertion that the Alabama courts are in conflict with this Court's findings in Tinker and Shelton if plainly erroneous and does not merit review by this Court.

CONCLUSION

For the reasons stated herein, Respondents respectfully request that this Court deny the petition for a writ of certiorari and allow the decisions of the Alabama Supreme Court and Court of Civil Appeals to stand.

Respectfully submitted,

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